

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CELLULAR COMMUNICATIONS)
EQUIPMENT, LLC)
) DOCKET NO. 6:14cv251
-vs-)
) Tyler, Texas
) 1:30 p.m.
APPLE INC., ET AL) September 8, 2016

TRANSCRIPT OF TRIAL
AFTERNOON SESSION
BEFORE THE HONORABLE K. NICOLE MITCHELL,
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

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20 P R O C E E D I N G S

21 (Jury out.)

22 THE COURT: I understand we've got something to
23 take up before we bring the jury in.

24 MR. LUMISH: Just briefly, Your Honor. We were
25 hoping to get some guidance from the Court.

26 We anticipate that CCE is likely to rest either
27 today or early in the morning tomorrow. I wanted to get
28 guidance from Your Honor on how you would like us to proceed
29 on 50(a) motions, whether we would just file them in paper at
30 some point before the jury gets the case, or if you'd like to

1 hear an oral recitation today. Just looking for some
2 guidance on that, if I may.

3 THE COURT: I'm fine with written submissions. I'm
4 also fine to hear oral argument on them. I just would like
5 to do it at 5:00. And I will say on the record, you won't
6 waive anything by not doing it at the instant they rest. But
7 we'll carry those. If you would like to make oral argument
8 on the motions, we'll do it at 5:00.

9 MR. LUMISH: Thank you, Your Honor.

10 THE COURT: Anything else?

11 MR. HOMRIG: Yes, Your Honor.

12 There's one issue with that designation as to
13 Mr. Matthias Sauer. That's unresolved. Specifically, there
14 were designations back and forth according to the protocol.

15 In the final one that we got back, some of our
16 counters had been removed. And it's on us, Your Honor. We
17 didn't catch it right away. So we sent them back and said:
18 Well, we drop our objections.

19 But there's one that we wanted to raise. The
20 argument is that it violates MIL 9, which is Your Honor's
21 ruling that witnesses cannot give an opinion about
22 infringement and the reasons for infringement or
23 non-infringement.

24 So what the question and answer is, is Mr. Sauer
25 was asked: Does Apple infringe CCE's patents?

1 He responded: I don't believe we do.

2 So we don't think that violates MIL 9, but here's
3 why it's important: Because what they want to play are
4 questions of Mr. Sauer about why he didn't instruct people
5 not to infringe the patents to set up the issue of, well,
6 Apple says -- and they have some testimony from him -- that,
7 you know, Apple has patents and treats patents with respect.

8 But then they want to play this thing of why didn't
9 he instruct people not to infringe, but then cut out his
10 belief that we don't infringe.

11 And so we're fine if it all comes out. We're fine
12 if he puts it in. We've prepared a clip that we can play at
13 the end so that we can use their clips, if they want to play
14 it today, but we don't think it should be that one-sided
15 situation.

16 THE COURT: Response?

17 MR. MCMANIS: Good afternoon, Your Honor.

18 This is actually the first I've heard explanation
19 of this objection. We thought we had a deal last night.

20 So I think, if the request is just to strike Page
21 16, Lines 9 through 12, "Have you instructed anyone at Apple
22 to do anything to try not to infringe," we would be okay with
23 that.

24 The next Q and A, 16, 13 through 19 about whether
25 or not Apple has changed the way its products operates since

1 the suit was filed, we still think that's improper, and that
2 should be pled.

3 MR. HOMRIG: We appreciate that offer. I think
4 that resolves most of it. I do think that with the remaining
5 question, the suggestion in the question is that there should
6 have been something to change. So we think it should stay
7 in.

8 But if Your Honor finds that that's all right and
9 would resolve the issue, we're okay with that, I think.

10 THE COURT: Okay. So the 13 through 19, Plaintiffs
11 you want that out as well? Is that what you're saying?

12 MR. MCMANIS: Your Honor, we would leave 13 through
13 19 in --

14 THE COURT: Okay.

15 MR. MCMANIS: -- and take out 9 through 12.

16 THE COURT: Okay. And, Mr. Homrig, you want --

17 MR. HOMRIG: That's right, Your Honor.

18 So, as Mr. Findlay points out, the suggestion in 13
19 to 19 is that there was some reason we should have changed.

20 So, although taking out 9 to 12 helps, we still
21 believe that the answer as to whether Mr. Matthias Sauer
22 believes that there's infringement, should stay in because
23 that's not an opinion that violates MIL 9. It's his personal
24 belief. And so that should stay in.

25 THE COURT: Okay. I'm going to take out 9 through

1 12 and take out the ultimate question on "we don't believe we
2 infringe," and you can keep in, Plaintiff, 13 through 19; is
3 that correct?

4 MR. MCMANIS: Yes, Your Honor.

5 THE COURT: All right.

6 MR. HOMRIG: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 Is that it?

9 Let's bring in the jury.

10 COURT SECURITY OFFICER: All rise for the jury.

11 (Jury in.)

12 THE COURT: Mr. Curry, you may continue.

13 MR. CURRY: Thank you, Your Honor.

14 PHILIP GREEN, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

15 DIRECT EXAMINATION CONTINUED

16 BY MR. CURRY:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. Still under oath.

20 A. Yes, sir.

21 Q. Okay. So, before we broke for lunch, you were taking us
22 through the rules for calculating damages in patent
23 infringement cases. And you showed us the statute.

24 Can you now turn to Slide 14 and explain what you're
25 showing here?

1 A. Sure.

2 So, in order to be able to figure out what the
3 reasonable royalty is, the amount of it and the terms,
4 when -- the second rule that I have to deal with is something
5 called a hypothetical negotiation.

6 And what this is -- all about is imagining what would
7 have happened, what this slide shows, if NSN, on the one
8 side, got together with Apple to negotiate a license to use
9 the '820 patent.

10 Q. Is the hypothetical negotiation something you just made
11 up?

12 A. No, sir. It's part of the case law and the other parts
13 of the rules that I have to follow.

14 Q. And could you, please, describe a little bit more what
15 you mean by a hypothetical negotiation?

16 A. Well, a hypothetical negotiation is essentially, like I
17 said, trying to imagine that NSN, on the one side, and Apple
18 got together to negotiate a patent license.

19 Because we're all here in this courtroom, we know that
20 it hasn't happened; and that's why it's called hypothetical.

21 Q. Why is NSN and not CCE at the hypothetical negotiation
22 table?

23 A. Well, NSN is at the hypothetical negotiation table
24 because, at the time of the hypothetical negotiation, the
25 rule is it's supposed to happen when the infringement first

1 began.

2 The infringement really first began with one of the
3 Apple iPads, which is accused of infringement in this case.
4 And that was first sold in March of 2012. At that time, NSN
5 was still the owner of the '820 patent.

6 In other words, the transaction with CCE and Acacia had
7 not yet occurred.

8 Q. Well, how is it, then, that the damages are up to CCE in
9 this case and not to NSN?

10 A. As I understand it, there's a lot of lawyers involved in
11 that part of the process. CCE is the successor, essentially,
12 to NSN for purposes of collecting damages on the '820 patent.

13 Q. Are there differences between real-world negotiations
14 and the hypothetical negotiation?

15 A. Yes, there are.

16 Q. What are those?

17 A. Those are really on my next slide.

18 This is really, again, part of the rules of thinking
19 about this negotiation between NSN or CCE, on the one side,
20 and Apple, on the other side, and sort of the differences
21 between the way the world really works and what we have to
22 think about here.

23 Q. Okay. So could you explain some of the differences that
24 you're showing on this slide, sir?

25 A. Sure.

1 The first difference, which is really the subject of the
2 first bullet point on either side, is that in a real-world
3 negotiation, one of the things that typically drives the
4 discussion in my experience is a discussion of whether the
5 patents that are being licensed are valid and infringed.

6 In other words, when you're sitting at a negotiation
7 table with -- in a normal license negotiation, nobody knows
8 that, and in point of fact, the parties typically really talk
9 about that issue over and over again. One party says they do
10 infringe. The other one says no. It's just a big fight.

11 In the hypothetical negotiation, that's not what
12 happens. The assumption is that the patent is already found
13 to be valid and infringed. Essentially, you-all have made
14 that decision.

15 Q. And I also see that in a real-world negotiation, you're
16 showing that the parties don't need to strike a deal, and
17 they can walk away. How does that compare to the
18 hypothetical negotiation?

19 A. Well, again, in a real-world negotiation -- and all of
20 us have experienced this, whether we've ever bought a car or
21 negotiated for renting a house or something, if we don't like
22 the terms, we can walk away. We don't have to do the deal.

23 In the hypothetical negotiation, the parties actually
24 have to come to agreement. There's no walkaway provision.
25 They have to come up with some kind of compensation for the

1 use of the patented technology.

2 Q. And I see that in the hypothetical negotiation, you're
3 showing that the cards are face up. What do you mean by
4 that?

5 A. Well, what I mean by that is -- and this kind of goes
6 back to negotiating with a car dealer or, you know, renting a
7 place -- you don't know what the landlord or the car dealer
8 is thinking. That discussion with the manager or whatever,
9 we don't know what's going on.

10 But in a hypothetical negotiation, both parties know
11 each other's business. You've got the financials. You have
12 the information from both sides.

13 Q. And, finally, can you explain the difference in the
14 real-world negotiation where the future is unknown versus
15 what you're showing in the hypothetical negotiation?

16 A. Sure.

17 In most negotiations that any of us have been in, we
18 don't know what's going to happen in the future. The car may
19 run; the apartment may not be what we wanted it to be,
20 whatever the negotiation was about.

21 However, with this hypothetical negotiation, here we are
22 in 2016 talking about a negotiation that happened in 2012.
23 We know about other facts that happened in the ensuing four
24 years, and we're allowed to use those in the hypothetical
25 negotiation.

1 Q. Okay. So you've set up the hypothetical negotiation.
2 Are there any rules as to what the parties in a hypothetical
3 negotiation can discuss as they negotiate a royalty?

4 A. Yes, there are. And we're not going to go through this
5 list in any detail, but this is a set of rules called
6 Georgia-Pacific.

7 And Georgia-Pacific, as many of us know, they make paper
8 and plywood and all kinds of things. This set of rules comes
9 from a very old case, and what it's talking about are facts
10 or factors that people could talk about at the hypothetical
11 negotiation.

12 They can talk about licenses. They talk about
13 competition. They talk about profits. They talk about what
14 the patents do. They talk about a variety of different
15 things. And that's what these factors are.

16 Now, there's other things they can talk about. This is
17 not what they say exclusively, but it is a list of what often
18 is focused on.

19 Q. And do patent damages experts like yourself and even
20 those retained by Defendants, consider the Georgia-Pacific
21 Factors?

22 A. Yes, they do.

23 Q. Well, let's look at Factor 9: Advantages of the
24 substitutes.

25 Have you been in court the entirety of the trial?

1 A. Yes, sir, I have.

2 Q. Did you hear Mr. Sebire testify that his invention is in
3 LTE?

4 A. Yes, I did.

5 Q. Okay. Well, if you use LTE, thereby using Mr. Sebire's
6 invention, would it not be the case that you couldn't use LTE
7 without using his invention?

8 A. Well, yeah. If you were thinking that the '820 patent
9 is actually a standard that somebody -- everybody has to
10 practice it in an LTE phone, that's how the parties to these
11 standard setting organizations work. Everybody wants to make
12 sure that one -- everybody uses the same particular way of
13 doing buffer status reporting, then everybody has to use that
14 technology; and you don't really think about Georgia-Pacific
15 Factor 9, the advantages.

16 Q. Okay. Well, my question is more like, if the substitute
17 is not using LTE, then does Apple have to pay the entirety of
18 the value of LTE in this case?

19 A. No, it doesn't. It only has to pay for the value of
20 what it's using.

21 Q. And is there another type of rules that apply in that
22 situation involving standards?

23 A. Yes, sir, there are.

24 Q. What are you showing on Slide 17?

25 A. Well, the rules that relate to what you do with a

1 license relating to a standard is called FRAND, F-R-A-N-D.

2 And FRAND stands for fair, reasonable, and
3 non-discriminatory. And, basically, what it means is that
4 you're trying to find a royalty rate that would apply to
5 everybody regardless of whether or not they're your
6 competitor.

7 In other words, often enough, a competitor won't try and
8 license another competitor. You can't do that here. FRAND
9 is fair, reasonable, and nondiscriminatory to everybody.

10 Q. Going back to the Georgia-Pacific Factors, are there
11 certain factors that have more weight or are more helpful in
12 this case?

13 A. Yes, there are.

14 Q. And what are those?

15 A. Well, those would be the licensing, CCE's licenses and
16 some that are considered with respect to Apple, some things
17 that relate to the nature and scope of the license, some
18 customary industry royalty rates that I need to talk about or
19 terms, and then some other things that are just part of the
20 overall Georgia-Pacific process.

21 Q. Can you put these factors into a special formula to
22 calculate a royalty?

23 A. No, sir, you can't.

24 Q. Why not?

25 A. Well, a royalty in a patent infringement case typically

1 comes from this hypothetical negotiation.

2 And all of us who have ever been part of a negotiation
3 know that it doesn't -- you don't walk into a car dealer and
4 think, well, I'm going to pay exactly this amount of money.

5 Usually there's some up and down on it, or, you know,
6 sometimes you can negotiate with a landlord on it. There's
7 going to be some up and down on it.

8 You know a little bit about -- you know what you want to
9 pay, and you may have a starting point, but you don't
10 necessarily know how it's going to work out. That's what a
11 negotiation is.

12 Q. So, in your Georgia-Pacific Factor analysis, where did
13 you start?

14 A. Well, I started with considering the other licenses for
15 the '820 patent.

16 Q. Okay.

17 MR. CURRY: And I think, at this point, we need to
18 seal the courtroom, Your Honor.

19 THE COURT: All right. The courtroom is going to
20 be sealed now. If you're not covered by the protective
21 order, please exit the courtroom.

22 (Courtroom sealed.)

23 (This portion of the transcript is sealed and filed
24 under separate cover as Sealed Portion No. 7.)

25 (Courtroom unsealed.)

1 Ms. Mayes, if you'll let everyone back in, please.

2 Thank you, Mr. Curry.

3 Q. (By Mr. Curry) Mr. Green, would you move to the next
4 slide, please?

5 A. Sure.

6 Q. After you determined comparability in Step 1, remind us
7 what you did in Step 2.

8 A. So in Step 2, what I did is I figured out how much of
9 the lump sum that was paid -- we saw that NEC had paid about
10 \$417,000 and Amazon had paid \$350,000 -- how much of those
11 payments were related to rights in the U.S. versus those in
12 other places, like Amazon had rights in Europe and NEC had
13 rights in Japan.

14 And so when I did that analysis, I came then to figure
15 out that, for NEC, the value of the rights to the U.S.
16 portfolio were a dollar three per unit.

17 In other words, all of the patents that they got rights
18 to amounted to a dollar three -- \$1.03 per Amazon unit --
19 excuse me -- NEC units sold in the United States.

20 And for Amazon, the rate ranged to between 37 and 49
21 cents per unit for the portfolio, for all of the patents that
22 CCE had in the U.S. that were relevant to the negotiation.

23 Q. And then can you explain your calculations in Step 3,
24 please.

25 A. Yes, sir.

1 Then what I had to do was figure out what was paid for
2 the '820 patent. So Step 2 was the portfolio. There's more
3 than just the '820 patent that was negotiated as part of
4 these U.S. portfolios. And so what I did is I had to find
5 out from the \$1.03, for example, what portion of that related
6 to the '820 patent.

7 And so there's a number of indicators that are in the
8 documents. One of them, for example, is which of the patents
9 had been asserted against -- by CCE as against NEC, because
10 as I told you, they had originally sued them. And so that
11 would be one way of being able to figure out what portion of
12 the portfolio relates just to the '820 patent. So I looked
13 at that.

14 Another way of looking at it was to look at what patents
15 CCE had actually asserted just in the United States. Those
16 are the important ones in the portfolio.

17 And so that's why you have these ranges. One is, you
18 know, 10 to 15 cents for NEC, and Amazon, it's 9 cents to 24
19 cents, depending on how you look at things.

20 Q. After you calculated the per-unit rates in Step 3, what
21 did you do next in your analysis?

22 A. Well, what I did is I started looking around at what
23 happened in the hypothetical negotiation. So I realized that
24 two values -- these values that I got for the NEC -- from the
25 NEC and the Amazon licenses were basically starting points.

1 So, like I say, when we go into negotiations, we usually
2 think about, well, I only want to be able to pay about this
3 much. We have some ideas about what those should be.

4 These are starting points for the negotiation, based on
5 the licenses that CCE had actually already done; and these
6 really are the prices that they had been getting for the use
7 of the '820 patent.

8 And so from here, what I need to figure out is, well,
9 what would the parties really negotiate to? Let's go back to
10 putting our hypothetical negotiation hats on and figure out
11 what else is going to affect that negotiation.

12 Q. In your opinion, does the evidence support a jury award
13 for 9 cents a device?

14 A. Well, that would be one piece that -- one way that the
15 jury could interpret this. They could say that the parties
16 would have started at 9 cents. Sure.

17 Q. And in your opinion, would the evidence support a jury
18 award of 24 cents per device?

19 A. Sure. You can see that part of the analysis gets you to
20 24 cents.

21 Q. And do you actually have an opinion as to where you
22 believe that Apple and CCE would arrive or converge in this
23 range?

24 A. Yes, I do.

25 Q. And what is that?

1 A. That's the 15 cents that I talked about when we
2 started -- started talking about the damages.

3 Q. And you mentioned also that the parties in the
4 hypothetical negotiation are going to be considering other
5 negotiating points. What are those?

6 A. Well, these are other things that would basically help
7 us to understand how to close this range between 10 cents and
8 24 cents effectively, or 9 cents and 24 cents, how do we
9 figure out what the parties would come to. And so there's
10 other facts that we would need to consider.

11 One is basically that CCE is going to wind up getting
12 a -- giving Apple a nonexclusive license. So, basically, all
13 of these other licenses are also nonexclusive. But that's an
14 important factor. They're not getting exclusive rights to
15 use the '820 patent. Exclusive rights are very valuable,
16 usually.

17 Also, there's another factor. When I talk about
18 factors, this is referring to the Georgia-Pacific factors
19 that we -- that I showed you earlier.

20 Factor No. 2 is Apple's patent license agreements. I
21 looked at them. Apple didn't really have any comparable
22 license agreements of its own for comparable technologies
23 that at least I was provided with.

24 I could see that Apple has taken running royalty
25 licenses in certain circumstances, but they didn't have any

1 licenses that I could then analyze just like I did the CCE
2 ones and give you some alternative rates for them.

3 Q. I want to talk a little bit about Factor 12.

4 You're showing industry volume discounts. What do you
5 mean by that?

6 A. Well, what I mean by that is that in the electronics
7 industry, especially in this industry that's related to
8 phones and electronics and so forth, there is often licensing
9 that has got a price for a certain number of units; and then,
10 often enough, there's a lower price if you have a larger
11 number of units when you're talking about licensing a patent.

12 So it may be, you know, 20 cents a unit if you have a
13 hundred thousand units; and then if you've got 200,000 units,
14 it goes down to 15 cents a unit.

15 Rarely, though, does it take the license -- the --
16 actually, I've never seen one where the discount is for
17 higher volumes that's greater than about 40 percent or
18 50 percent. You never see a cut below that for a running
19 royalty on a per-unit basis.

20 Q. How does it make sense that a company that infringes
21 more, gets a better deal?

22 A. Well, I'm not sure that those companies are actually
23 infringing more. They have actually gone and taken licenses;
24 and they have agreed that since they have higher volumes,
25 they are going to pay less. That's part of the advantage of

1 actually having taken a license.

2 Q. And earlier you described the differences between the
3 real-world negotiation and a hypothetical negotiation. Would
4 those differences also affect the negotiations?

5 A. Yes, they would.

6 Q. All right. Please tell us how.

7 A. Well, one of the reasons -- we talked about how the
8 volume discounts on the one hand would affect a hypothetical
9 negotiation. But then in the hypothetical negotiation we
10 know that there's validity and infringement that are going to
11 be assumed. And so what that means is that even though there
12 may be some indicators in these licenses that -- of the
13 royalty rates, none of these licenses actually had anybody
14 admit to validity and infringement.

15 So all of these prices don't assume this very big
16 difference between the hypothetical negotiation and the real
17 world, which is that the '820 patent is valid and infringed.

18 Generally, if a patent is valid and infringed, the
19 royalty rate is higher. The entity has to take a license.
20 It's using the technology.

21 Q. In the real world can a company use its defenses of
22 noninfringement and invalidity as leverage to drive down the
23 rate?

24 A. Yes, sir, they can.

25 Q. Can they do that in the hypothetical negotiation?

1 A. No, they can't. That's part of the construct, actually.
2 That's one of the key differences here.

3 Q. And is that why you're showing the green arrow moving
4 toward -- more towards the 24-cent side?

5 A. Yes, sir.

6 Q. And what did you conclude that the parties would arrive
7 at in this range?

8 A. I concluded that the parties would arrive at a royalty
9 rate of 15 cents a unit. It's in the middle of, effectively,
10 the Amazon rate. It's a very -- at the very high end of the
11 NEC rates, but it's consistent with what the actual licensing
12 has been. And when you start to look at the fact that none
13 of these licenses assumed validity and infringement and
14 assume some volume discounts, this would be a fair and
15 reasonable royalty.

16 Q. And after you identify that Apple 15 cents per
17 infringing unit, where you then able to calculate the total
18 amount of unpaid royalties that Apple owed CCE in this case?

19 A. Yes, I was.

20 Q. Can you take us through that, please?

21 A. Sure.

22 So to be able to calculate the damages in this case, one
23 would take a royalty rate and multiply it by the number of
24 accused units. And so what I did is I calculated up the
25 total number of devices that have been accused, the iPad 3's

1 and 4's, the iPhone 5 -- 5's and 6's. And it turns out that
2 through March of this year there is 184,318,469 units that
3 were sold.

4 And multiplying those by 15 cents per unit, the royalty
5 rate gets you damages of 27,647,770.

6 Q. And is 15 cents per unit also a FRAND rate?

7 A. Yes. I think it is.

8 Q. And can you please explain why?

9 A. Well, sure.

10 This FRAND notion and this FRAND discussion is really
11 something that is trying to make sure that a license -- the
12 royalty rate that's being paid for something that's
13 standard-essential is fair. And there's a lot of different
14 ways to look at it, but one of the ways is to basically
15 separate out the influences of competition in other things
16 and what the royalty rate would be.

17 And so one thing that we were taking a look at is
18 whether or not the royalty is something they call ex-ante.
19 That's the first part of this slide.

20 And it's basically to say, well, is this a rate that
21 they would have paid if they knew nothing else about the
22 market and the technology hadn't yet been adopted. It's
23 ex-ante.

24 And, in my view, because Amazon and NSN were exiting the
25 market, that's kind of what ex-ante is. They don't -- they

1 don't have to pay it in the future. They know that there's
2 no competition anymore. In point of fact, CCE is not -- and
3 NSN weren't in competition with Apple for the use of this
4 technology. CCE and NSN don't sell smartphones or tablets.

5 Q. Could you move your mic closer, please?

6 A. Sure.

7 Q. And I see on bullet point 3 you're saying that the
8 benefit of the LTE standard did not drive the royalty rate.

9 What do you mean by that?

10 A. Well, what I mean by that is if you look at what I was
11 showing you from the license negotiation, those were all
12 about, as we heard Ms. Wagner say, about the geographies, the
13 unit volumes, some of the other terms. Whether or not the
14 benefit of LTE was present or not, wasn't part of those
15 discussions.

16 Q. And did your analysis push the royalty rate outside of
17 the range that others had paid?

18 A. No, it doesn't. As you can see, it's consistent with
19 the rates that were paid in the NEC and the Amazon
20 agreements.

21 Q. And how does volume discounts factor into your FRAND
22 analysis?

23 A. What it goes to show you is that, for example, in the
24 Amazon deal there's a -- there's a royalty. It could be as
25 much as 24 cents per unit as a royalty. The royalty that

1 I've included on the 15 cents is, it's about 40 percent of
2 that -- or excuse me -- 60 percent of that. It's consistent
3 with the discount.

4 Q. All right. Could you please tell the jury what you
5 found in terms of the amount of unpaid royalties that Apple
6 owed CCE in this case?

7 A. Again, the total amount of CCE's damages are
8 \$27,647,770.

9 Q. Thank you.

10 MR. CURRY: Pass the witness.

11 A. Through March of this year.

12 THE COURT: All right. Cross-examination.

13 MR. FINDLAY: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. FINDLAY:

16 Q. Good afternoon, Mr. Green.

17 A. Good afternoon.

18 Q. My name is Eric Findlay, and I represent Apple in this
19 case.

20 Do you understand that?

21 A. Yes, I do.

22 Q. I don't think you and I have ever met before, so it's
23 nice to meet you.

24 A. It's nice to meet you, too.

25 Q. Welcome to Tyler.

1 A. Thank you.

2 Q. Excuse me for that.

3 Let me -- if I could, I want to start off someplace
4 different than what I had planned on. Is that all right?

5 A. Sure.

6 Q. I was here this morning before we broke for lunch. And
7 you were here for Dr. Caloyannides' testimony?

8 A. Yes, sir, I was.

9 Q. And then you gave a little bit of testimony before we
10 broke for the lunch break; isn't that right?

11 A. Yes, sir.

12 Q. And you said something there that I wanted to talk to
13 you about just to start, and then I'll get back with my
14 normal roadmap that I have.

15 Let me see if I can find a highlighter.

16 Do you remember when -- I think it was under
17 cross-examination -- Mr. Lumish asked Dr. Caloyannides
18 something along the lines of you don't have any testing, or
19 you don't have any measurement which can prove to the jury
20 the amount of the alleged improvement that choosing between a
21 long or short buffer status report might give to the LTE
22 network and uplink latency.

23 Do you recall that questioning?

24 A. I remember that line of questioning, yeah.

25 Q. And you would agree with me, wouldn't you, that

1 Dr. Caloyannides basically said: I don't have any testing
2 that can prove that improvement, and I don't have any
3 measurements that can prove that improvement, that alleged
4 improvement.

5 A. That's my recollection of the testimony, too.

6 Q. And then I think you -- and I think you said the exact
7 same thing in your opening remarks before we broke for lunch.

8 And this was questioning by your own counsel: Have you
9 seen anything measuring or quantifying the benefits that are
10 specifically enabled by the '820 patent?

11 And you said, no, you hadn't, correct?

12 A. That's correct.

13 Q. And I think you kind of admitted that as much in your
14 report in this case and also in the deposition that you gave
15 earlier.

16 Would you agree with that?

17 A. I would agree with that, yes.

18 Q. So then you said -- or I'm sorry -- your counsel asked:

19 Well, how -- well, then how are you able to go about
20 determining what a royalty should be in this case?

21 And then you talked about: In the circumstances where
22 you don't have any detail about the benefit of the specific
23 use of a patent, then what you wind up doing is taking a look
24 at prior licensing history, what the industry might have paid
25 for using the technology and so forth.

1 Correct?

2 A. Yes, sir.

3 Q. Okay. So just so we're on the same page, CCE apparently
4 is not going to present, to your knowledge -- and I -- if you
5 don't know, tell me you don't know -- CCE is not going to
6 present to this jury a shred of evidence that can quantify in
7 some tangible way any alleged benefit that choosing between
8 short and long buffer status reports as opposed to sending
9 just long buffer status reports has on uplink performance of
10 a network.

11 Would you agree with that?

12 A. Well, I can tell you I don't know what CCE may present
13 throughout the rest of the trial. I haven't seen any
14 documents or anything that specifically measures or
15 quantifies the benefits, that's for sure.

16 Q. And that's fair, and I appreciate that.

17 And you have been here since opening statements,
18 correct?

19 A. Correct.

20 Q. I appreciate that, Mr. Green. Thank you.

21 So, if we have to -- and it's your testimony, then, that
22 we have to look at the licenses. You would agree with me,
23 though, that there isn't -- and we'll talk about this more in
24 detail later on, but just to make sure we're all on the same
25 page when we start, you would agree with me there isn't one

1 license that CCE ever gave to just the '820 patent alone,
2 correct?

3 A. That's right. CCE gave portfolio licenses; and in many
4 instances, you can see from the licenses, specifically Amazon
5 and NEC, that the '820 patent was part of the key drivers.

6 Q. Okay. So we don't have -- there is not a single license
7 you can show this jury where it says here, somebody is paying
8 just for the '820 patent, fair?

9 A. That's fair.

10 Q. All right. And would you agree with me that you have no
11 evidence to present to this jury that any company or any
12 individual or any group has ever come to CCE and said: Hey,
13 we read that '820 patent; we would like to take a license
14 just to that patent because we think it improves uplink
15 latency in the LTE network?

16 A. I don't think I've seen a document that talks
17 specifically about the scenario that you're talking about
18 where somebody just walks in and licenses a single patent.
19 That's pretty unusual. But I haven't -- I agree. I haven't
20 seen a document like that.

21 Q. So the answer to my question is yes; you haven't seen
22 any evidence like that?

23 A. No. I would be shocked to find it, though.

24 Q. And, likewise, you haven't seen any evidence that anyone
25 came to Acacia when it owned the '820 patent and said the

1 same sort of thing: Hey, we want to take a license to just
2 that patent?

3 A. Right. Again, I would be shocked to find it. Usually
4 these portfolios are licensed as portfolios.

5 Q. Fair enough. And we'll talk about that.

6 And then as to the original owner of the '820 patent,
7 NSN, again, you don't have any evidence that anyone ever came
8 to NSN and said: That '820 buffer status report patent is
9 really good; I want to take a license just to that patent?

10 A. I haven't seen any evidence from NSN about its licensing
11 really at all, so...

12 Q. Okay. Fair enough. Thank you for indulging me with
13 those kind of introductory questions. I'll get back into my
14 prepared notes.

15 You've done this lots of times before, I think you said?

16 A. Yes, sir.

17 Q. Testified in trial, how many times do you think?

18 A. At trial, probably over 40 times in my career.

19 Q. Okay. And you were up front enough -- and I appreciate
20 that -- to share with the jury that the rate you're getting
21 paid in this case, I think, is \$550 an hour; is that right?

22 A. My firm is getting paid, yes.

23 Q. Your firm. I'm sorry. That's right.

24 And you would agree that's a pretty -- that's a pretty
25 healthy rate?

1 A. I agree, sure.

2 Q. Okay. And you would agree -- and I don't mean anything
3 other than just that that's a -- you're well paid for what
4 you do. Let me put it that way.

5 A. I don't know about that. I mean, I'm able to charge a
6 rate because of the kinds of services and the detail I
7 provide. So I'm not sure I can say one way or another.

8 Q. Okay. Well, my point is -- and I'm not trying to trick
9 you or anything -- that in what you do as an expert witness,
10 you're well paid, as is Mr. Bakewell. He'll be up here
11 testifying later on. He's our damages expert. He's well
12 paid.

13 We can probably agree on both of those facts; wouldn't
14 you say?

15 A. I would say that's true, yeah.

16 Q. Okay. And you're correct in pointing out that it's not
17 you that's sending the bill for \$550 an hour; that comes from
18 your company, right?

19 A. That's right.

20 Q. And you understand that's the same way it works with
21 Mr. Bakewell. Whatever he's charging per hour, that comes
22 from his company, not from him individually, right?

23 A. That's right.

24 Q. And you know Mr. Bakewell professionally?

25 A. Yes, I do.

1 Q. Respect him?

2 A. Yes, I do.

3 Q. Okay. Your company has worked a lot for Acacia. I
4 think the numbers we were given was, since 2008, your company
5 had billed Acacia a little over \$3.5 million.

6 Does that sound right?

7 A. Out over the course of four separate matters, yeah.

8 Q. Okay. Fair enough.

9 And the billings on just CCE matters, I think through
10 July of this year, was just shy over \$800,000. Would you
11 agree? Does that sound close to right?

12 A. Sounds probably close to right. That's right.

13 Q. And there's probably more added since then since you've
14 been working hard getting ready for trial?

15 A. Yeah. Not as much as you might think, but yeah.

16 Q. Okay. Can we agree that one of the reasons the figures
17 are that big for your company and the figures are that big
18 for Mr. Bakewell's company, I imagine, is because taking a
19 case all the way to a patent trial, like we are here, in
20 front of a jury, is an expensive endeavor?

21 A. It's an expensive endeavor, but it's also that there
22 were other parts of the case which we're not talking about
23 here, so...

24 Q. And that's fair, and I appreciate that.

25 But you would agree with me that -- I think -- I think

1 you talked about this in your deposition. The average cost
2 of litigation to take a patent case all the way to trial is
3 averaged between 3 and \$5 million. Is that a fair value?

4 A. Between all the lawyers and all the experts and all
5 that, that's about what these cases do cost on average, yes.

6 Q. Okay. Good.

7 Can you and I agree on -- I hope we can agree on this
8 next statement. Can we agree that as between you and
9 Mr. Bakewell, the things that we should be focusing on is the
10 substance of your testimony, the substance of your opinions,
11 not about the finances as to who was paid what?

12 A. I think that's fair, sure.

13 Q. Okay. Good. I thought we could agree on that, but I
14 appreciate that. Thank you.

15 I think your counsel confirmed this, but I just want to
16 go through it with you briefly. You are not here to give
17 this jury any opinion in terms of infringement?

18 A. That's right.

19 Q. And you're not here to give this jury any opinion in
20 terms of validity?

21 A. That's right.

22 Q. And you would agree with me that if the jury finds that
23 there is no infringement, if the jury believes that Apple is
24 not using the '820 patent, then there are no damages and that
25 number is zero?

1 A. Right. My whole analysis assumes that you-all find that
2 the patent -- the '820 patent is valid and infringed. Sure.

3 Q. Okay. Fair enough.

4 You know that Apple is a company that makes, among other
5 things, the iPad and the iPhone, makes consumer electronic
6 devices, correct?

7 A. That's right.

8 Q. And you would agree with me that Apple is an innovative
9 company?

10 A. With respect to many of its consumer products, sure.

11 Q. Yeah. It's an innovator. I think we can all agree on
12 that?

13 A. Yes, sir.

14 Q. All right. Thank you.

15 This might be stating the obvious, but you would agree
16 that Apple is not a cellular network operator, correct?

17 A. That's true.

18 Q. So I looked at your report and you submitted three
19 reports in this case, I think; is that right?

20 A. That's right.

21 Q. And at least in your initial report, I think I saw the
22 word "network operator" over a hundred times. Does that
23 sound -- any reason you would need to quibble with that
24 number?

25 A. No. I -- I'd like to answer your question completely.

1 Q. Please.

2 A. I understand that there's all kinds of rules with --

3 MR. CURRY: May we approach?

4 THE COURT: Yes, approach.

5 A. I just don't want to violate them.

6 MR. CURRY: Appreciate that.

7 (Bench conference.)

8 MR. CURRY: Mr. Findlay is taking advantage of the
9 fact that the carriers were severed and stayed. Back when
10 Mr. Green wrote his original report they hadn't been severed
11 and stayed. And so now he's trying to take a victory lap
12 over him on this because naturally in his original report
13 he's talking about the network operators a lot and the
14 carriers.

15 MR. FINDLAY: I'm not at all, Your Honor. He's
16 talking -- his slides talk about network operators, equipment
17 manufacturers. And this is obviously about the network. I
18 just want to make it clear. And that's the only question I'm
19 going to ask, that when you talk about network operators in
20 your report, you're not talking about Apple. That's as far
21 as I'm going with it, just one question.

22 MR. CURRY: My witness should not be penalized for
23 talking about the carriers when the carriers -- and talking
24 about them a lot in his original report, at a time when he
25 wrote his report the carriers were still in this case. And

1 that's what Mr. Findlay's talking about.

2 THE COURT: Let's move on.

3 MR. FINDLAY: Okay.

4 MR. CURRY: Thank you.

5 (Bench conference concluded.)

6 Q. (By Mr. Findlay) You would agree with me that no one
7 from CCE was involved in the '820 patent, correct -- in the
8 development or getting, if you will, of the '820 patent?

9 A. That's correct. CCE acquired a portfolio that included
10 the '820 patent.

11 Q. And -- I'm sorry. And that includes also no one from
12 Acacia was involved in the '820 patent?

13 A. Not in its development. Acacia acquired the patent from
14 NSN which developed it.

15 Q. And as I think the jury has heard, Acacia bought the
16 patent from NSN. Nokia Siemens Network gave it to CCE. And
17 eventually we wound up here. Fair?

18 A. That's fair.

19 Q. You would agree with me, also, that the '820 patent did
20 not invent the idea of buffers?

21 A. That's right.

22 Q. It did not invent the idea of buffer status reports?

23 A. To my knowledge, that's true. Again, I'm not a
24 technical expert. We've all agreed upon that, so to my
25 knowledge, you're right.

1 Q. But you've spoken to the technical experts?

2 A. Correct.

3 Q. And you would agree with me it also didn't invent the
4 idea of a long or short buffer status report?

5 A. Not to my knowledge. That's correct.

6 Q. And you would agree with me that there are other buffer
7 status reporting patents out there, correct?

8 A. I believe there are. That's true.

9 Q. Okay. Now, as the jury has heard, the '820 patent has
10 to do with uplink capacity, correct?

11 A. Yes, sir.

12 Q. And that's when data is going from my phone up to the
13 network?

14 A. That's right.

15 Q. When something is coming down into my phone, we can call
16 that downlink or download. Do you agree with me?

17 A. Yeah. I think downlink is usually how I would refer to
18 it.

19 Q. So if I'm sending a picture to my son at college from my
20 phone, when I -- when it leaves my phone that's an uplink
21 transmission, for us lay folks?

22 A. That's right.

23 Q. And then if I'm -- if I'm watching Netflix, I'm watching
24 a show on my phone, I'm streaming it or on my iPad, that's
25 all downlink, correct?

1 A. That's correct.

2 Q. And would you agree with me that there's more -- a lot
3 more downlink traffic out there than there is uplink traffic?

4 A. There has historically been that. That's true.

5 Q. And historically that's been the -- that's been the main
6 focus, if you will, on people working on the network is to
7 increase the speed of downlink so you can stream Netflix, you
8 can watch movies, download songs, that sort of thing?

9 A. Right. That's historically true. It's changing lately,
10 to my understanding.

11 Q. Okay. And the '820 patent doesn't have anything at all
12 to do with downlink activity, right?

13 A. That's right. It has to do with uplink. Although as I
14 understand it, there is some technical relationships between
15 downlink and uplink which are beyond the scope of what I
16 truly understand.

17 Q. And they're far beyond mine, too. But the '820 is --
18 it's limited simply to uplink. That's your understanding?

19 A. That's correct.

20 Q. And you also agree with me, obviously, that the '820 is
21 limited solely to the LTE network?

22 A. That's right.

23 Q. So in Boston I'm going to bet you've got better LTE
24 coverage than we do out here in East Texas; but I can tell
25 you there are lots of times if I drive to court in Texarkana,

1 I'll go through lots of areas where I don't have LTE. There
2 are some areas where I don't have any cell phone coverage.

3 And if -- and if that happens and I'm off LTE, that,
4 obviously, means my phone is not using the '820 patent even
5 if we were to -- even if the jury were to believe CCE's
6 infringement allegations, correct?

7 A. If I understand your question, I -- all you're asking
8 is, well, there are parts of the country where LTE isn't
9 available. I agree with you. And you would be surprised how
10 bad the cell service is in Boston.

11 Q. Fair enough.

12 And -- and any time that happens, if I look down at my
13 phone and I'm on 3G, or I'm on something other than LTE, that
14 doesn't concern the '820 patent at all. Can we agree on
15 that?

16 A. To my knowledge, that's correct.

17 Q. Okay. And would you agree with me that a lot of times
18 when somebody doesn't have LTE -- for instance, in their
19 home -- they might put their phone on a wireless, on a WiFi
20 network.

21 A. Yes. I think that's true.

22 Q. Do you have WiFi at your house?

23 A. Yes, I do.

24 Q. And when you get to the house, does your phone either
25 automatically connect to it, or do you sometimes just take a

1 moment and put your phone on WiFi?

2 A. It tends to want to automatically connect, yes.

3 Q. Mine does, too.

4 And are you aware that the iPhone actually will do that?

5 If it senses an area where it's in a known WiFi network, it

6 will automatically connect to that -- connect to the WiFi?

7 Is that your understanding?

8 A. That is my understanding.

9 Q. Okay. And you would agree with me that when your
10 phone's on WiFi, that's got nothing to do with LTE? And
11 then, of course, that's got nothing to do with the '820
12 patent?

13 A. Right. Yeah. WiFi is another feature that's in your
14 phone that is part of the overall operation of the phone.
15 Yes.

16 Q. So and -- that's a good point. But a better way to ask
17 my question probably would be, if I'm doing uplink work and
18 I'm sending photos uplink or I'm posting something to
19 Facebook and I'm on WiFi, because I'm in my house, that's got
20 nothing to do with the LTE network and nothing to do with the
21 '820 patent. Can we agree on that?

22 A. Usually, that's true. It depends on what's going on in
23 your house. But, yeah, if you're on WiFi you're typically
24 not, to my knowledge, dealing with an LTE network.

25 Q. And is your experience the same as mine in that every

1 year it seems to me that there are more and more areas where
2 there is readily WiFi available, free WiFi available?

3 A. It depends. Yes. I mean, we're seeing more and more
4 WiFi networks when we go into stores and so forth, hotels,
5 what have you. But the quality of those networks and what
6 your phone can hook into is still kind of a -- it's still not
7 completely reliable, specifically.

8 Q. No. I would agree with you. Sometimes you might just
9 have two bars instead of the -- you see, I've got -- you see
10 the little WiFi signal there in the corner?

11 A. Yeah.

12 Q. Yeah, I've got four bars in here. I'm on the Court's
13 WiFi, but sometimes you might not have the full bars and so
14 the connection may not really be fast.

15 A. Right. And then sometimes the connection isn't
16 sufficient to download your e-mail. There's a lot of
17 different things that go on.

18 Q. And I don't disagree with that at all. But in general,
19 would you agree with me it seems every year we find there are
20 more and more places that have free WiFi available to folks?

21 A. I agree with you.

22 Q. Okay. Thank you.

23 And the reason I asked that is because there was one
24 part in your report -- and if you want to see it, let me know
25 and I'll show it to you -- where you talked about that

1 sometimes at -- there could be a bottleneck effect with a
2 cellular network and major events with large crowds. Do you
3 remember that in your report?

4 A. Yes.

5 Q. And I assume there you were talking about things like
6 sporting events or concerts where you've got 80,000 people
7 somewhere, that there could be a lot of traffic on the
8 network -- on the cellular network, and that it could slow
9 things down?

10 A. It can be at major sporting events. It could be there
11 are -- there are places where there's lots of, say, tourists
12 who are taking photos and then they're uploading them into
13 their Facebook and stuff, so it's a -- it's a variety of
14 different circumstances that I understand the carriers are
15 having to plan for and work with these things.

16 Q. Sure.

17 Would you agree with me, though, that -- well, let me
18 put it this way: Are you a sports fan?

19 A. Sure.

20 Q. Cowboys fan by any chance?

21 A. Well, I'm living in Boston so...

22 Q. Okay. Well, you know, you need to go see Jerry's World.

23 A. So I hear.

24 Q. Okay. And I've been there, and probably wouldn't
25 surprise you that they've got free WiFi throughout AT&T

1 Stadium.

2 A. Yes, they do.

3 Q. And if you were to be lucky enough to go see a Mavericks
4 game at the American Airlines Center in Dallas, same sort of
5 thing.

6 A. Correct.

7 Q. And I even looked up -- since I knew you were from
8 Boston, I found an article on Boston.com that said: At least
9 Fenway Park has baseball's speediest WiFi.

10 A. Considering their sponsorship, yes.

11 Q. Okay. So you would agree with me, in more and more of
12 those places where you find lots of people, like a concert,
13 like a sporting event, there are tons of folks on WiFi.
14 Isn't that just fair?

15 A. There are tons of folks on WiFi. There are tons of
16 folks that are on -- just using their cellular data as well.
17 So it's a whole mixed bag, as I understand it.

18 Q. But if they're on WiFi, then they're not bottlenecking
19 the LTE network as you were talking about in your report,
20 fair?

21 A. Technically fair, but what's -- at least as I understand
22 it; and based on my analysis of going through the industry,
23 there's a tremendous number of instances where even around
24 Gillette Stadium or even Fenway, they have put in these
25 little small cell base stations to be able to cover this.

1 And so there's an awful lot of both WiFi and LTE
2 connectivity inside of sporting events and so forth.

3 Q. Thank you.

4 Let me turn a little bit more to the '820, and let me
5 turn to -- do you recall -- let me read you a portion of your
6 report. And if you want to see it, I'll be happy to provide
7 it to you.

8 You talked about alternatives to infringing, in your
9 report. And you said, quote: According to Mr. Jones and
10 Dr. Caloyannides, a non-infringing alternative would be a
11 reversion to prior methods of buffer status reporting. In
12 this instance, there would be increased latency and no
13 scheduling gain.

14 Do you recall that?

15 A. Yes.

16 Q. Okay. Would you agree with me, though, that just in the
17 way we started this examination, where you admitted that
18 there is no evidence or no testing or measuring which can go
19 to prove the amount of the alleged improvement that '820
20 gives to LTE, similarly, you don't have any testing or any
21 measurement to show that the old way, the reversion way, was
22 slower. Fair?

23 A. Well, I don't have -- I haven't seen any testing. I'll
24 give you that. But, logically, it would make sense that if
25 you weren't using these technologies, that they hadn't

1 actually been implemented in standards, then you wouldn't be
2 getting these benefits, just logically.

3 Q. Let me break that down a little bit.

4 So you agree on the first part of my question, that
5 there's no evidence or testing or measurement you can point
6 to to suggest that there's a specific improvement in uplink
7 reduced latency.

8 Similarly, there's no testifying -- I mean, there's no
9 testing or measuring which establishes that the old way is X
10 slower.

11 A. Correct. I haven't seen it yet, but, logically, just
12 understanding the differences in the technologies, it would
13 make sense that it would be slower or would be more use -- it
14 would use more resources in the system.

15 Q. But that opinion comes just from your conversations with
16 Dr. Caloyannides and Mr. Jones; is that fair?

17 A. Sure, CCE's technical experts.

18 THE COURT: Mr. Findlay?

19 MR. FINDLAY: Yes, ma'am.

20 THE COURT: Whenever we get to a good stopping
21 point, it's about time for our afternoon break.

22 MR. FINDLAY: This will be fine, Your Honor. Thank
23 you.

24 THE COURT: Very good.

25 Ladies and Gentlemen, we'll be in recess for 15

1 minutes.

2 COURT SECURITY OFFICER: All rise.

3 (Jury out.)

4 (Recess.)

5 (Jury out.)

6 COURT SECURITY OFFICER: All rise.

7 THE COURT: Let's bring in the jury, please.

8 (Jury in.)

9 THE COURT: Please be seated.

10 Continue.

11 MR. FINDLAY: Thank you, Your Honor.

12 Q. (By Mr. Findlay) Welcome back, Mr. Green.

13 A. Thank you. Welcome back.

14 Q. I wanted to start off where I started off before real
15 quickly. There was a line of questioning that I meant to
16 raise with you.

17 We've agreed that you are looking at the licenses since
18 there's no testing or measurable evidence to -- to point to
19 as to the benefit of the '820, et cetera. We talked about
20 that.

21 But in connection with that, it's true, is it not, that
22 you haven't set forth any opinion which compares -- which
23 compares the value of the '820 patent specifically relative
24 to all of the other patents in the CCE portfolio?

25 A. I wouldn't say that. I'd like to answer that question

1 more fully, but I think I might be stumbling over something
2 the Judge doesn't want me to talk about.

3 THE COURT: Counsel, approach.

4 (Bench conference.)

5 THE COURT: I would like this witness to stop
6 saying he doesn't want to walk into things the Judge doesn't
7 want him to talk about.

8 MR. CURRY: Okay. I think he's just trying to
9 respect your -- your motion in limine.

10 THE COURT: Okay.

11 MR. CURRY: And I think that the questions are
12 getting into it and so...

13 MR. FINDLAY: This is --

14 MR. CURRY: I mean, my witness is in a bad
15 position. He can either not testify truthfully or violate a
16 ruling in limine. And so we, actually, told him in this
17 scenario to say that, so that we can approach and work it out
18 with the Judge rather than plowing into --

19 MR. FINDLAY: The motion in limine.

20 THE COURT: Yeah.

21 MR. CURRY: Okay.

22 THE REPORTER: I'm sorry.

23 MR. CURRY: So I think that the witness is -- said
24 what he said about Your Honor's rulings because the analysis
25 that he did that identifies the '820 patent, particularly as

1 a valuable patent, is contingent upon the -- Apple's IPRs not
2 getting instituted.

3 And so in this scenario I think, you know,
4 Mr. Findlay has opened the door. The witness should be
5 allowed to answer fully and honestly as to what his analysis
6 should be -- or actually is.

7 MR. FINDLAY: Frankly, I don't know what he's --
8 what they're talking about. I was asking -- trying to get
9 him to confirm, as he's testified in deposition, in his
10 report that he didn't value the '820 separately from the
11 entire CCE portfolio. That's a classic --

12 MR. CURRY: I don't think classic.

13 MR. FINDLAY: -- question.

14 THE COURT: Okay.

15 MR. FINDLAY: I think I know what my question is,
16 Mr. Caldwell. That's my question.

17 THE COURT: Okay. He can answer that question
18 presumably, right? Wait.

19 MR. CURRY: Which -- which question? It -- it gets
20 to --

21 MR. FINDLAY: You didn't value the '820 patent
22 relative to all of the other patents in the CCE portfolio.

23 MR. CURRY: He did, though. And he used the denial
24 of the IPR institution as part of that.

25 MR. FINDLAY: Where is that? If you show me where

1 he did that -- well, he didn't -- that's not what he said in
2 his deposition. He just said, no, he didn't do it because he
3 was talking about a damages analysis, not a valuing.

4 So I don't understand how this is conflating with
5 the IPR issue. I don't see the connection at all.

6 MR. CURRY: And it is part of his analysis. And,
7 you know, at this point I think --

8 THE COURT: No. We're not getting into it.

9 MR. FINDLAY: All right.

10 THE COURT: So let's figure out how to frame the
11 question in a way that doesn't get into it and that is
12 consistent with his prior testimony.

13 MR. FINDLAY: That's my question. You haven't
14 valued the '820 relative to all of the other patents in the
15 CCE portfolio. That's the only question I'm asking. Then
16 I'm moving on.

17 THE COURT: Okay. Well, and so what is his prior
18 testimony on that?

19 MR. CURRY: He has disclosed that his analysis
20 depends on, in part, how Apple tried to institute the '820
21 and failed and so that --

22 THE COURT: So he has a place in his report where
23 he values only the '820 patent?

24 MR. CURRY: Let -- let me answer very precisely
25 because it's not that he assigns like a certain weight. It's

1 when he's figuring out which of the patents in that portfolio
2 are the most important. He talks about how there is
3 significant importance for the '820. He doesn't quantify it.
4 Maybe that's the question that Mr. Findlay can ask.

5 MR. FINDLAY: That's the question I'm asking.

6 MR. CURRY: So the question -- the question was had
7 he compared the value of the '820 patent, specifically,
8 relative to the other patents. And so his --

9 MR. FINDLAY: With the CCE portfolio, correct.

10 MR. CURRY: I'm going to finish my point.

11 So I think what he's saying, and the reason that it
12 tripped up the witness, is he said this -- because there's
13 all of the threats of PTAB proceedings and so forth. And
14 this one has been twice denied. And so that's why -- I mean,
15 actually we're just trying to make sure that he doesn't step
16 on your orders.

17 THE COURT: Right.

18 MR. CURRY: But the question specifically says, why
19 does this one stand out? Why is it relative to the others?
20 That's what it said.

21 MR. FINDLAY: Respectfully, that's -- that's not
22 what I'm trying to ask him. I'm simply trying to get the
23 point that I think it was clear in his report and his
24 deposition, that he didn't do an analysis of the '820 value
25 in comparison to all of the couple hundred patents in the CCE

1 portfolio. That's the only point I'm trying to get at,
2 Judge.

3 MR. CURRY: Well --

4 MR. FINDLAY: I don't understand or agree that this
5 conflates with the IPR MIL.

6 MR. CURRY: You can see why our witness got tripped
7 up. I mean, we -- we read the question.

8 If Mr. Findlay is going to go into this, he needs
9 to be extremely narrow in how he asks the question because,
10 otherwise, our -- our witness does have an answer to this,
11 but it's covered by our ruling.

12 MR. FINDLAY: Where is his answer in the report
13 that says that? You're saying that. Show us where that is.
14 I think that's relevant to this discussion, guys.

15 MR. CURRY: You don't think he talked about the IPR
16 denial of institution in his report?

17 MR. FINDLAY: No, I'm sure he did. My point is I
18 don't remember anything in his report where he said somehow
19 that he couldn't value the '820, relative to the other
20 patents because of that issue. That's what I think you're
21 trying to tell the Judge. And I'm saying, show us in the
22 report where that is. Otherwise, you've got nothing to back
23 up your complaints about my question.

24 MR. CURRY: I'm actually staying focused on the
25 question you asked him and --

1 THE COURT: I'm trying to figure out a question he
2 can ask the witness at this point and not get into this
3 objection.

4 MR. CURRY: I think mathematically calculate or
5 something like that. I mean, you know, I think then he can
6 say no, and we can move on.

7 MR. FINDLAY: I'll ask: Did you calculate the
8 value of the '820 patent, relative to the value of the other
9 patents in the portfolio?

10 MR. CURRY: But I think that's still in the box
11 where this one is not relative to others. So that's why I
12 think Mr. Curry's proposal is if it's sort of a
13 quantification thing, that might get you there. But if his
14 point is always this one is higher --

15 THE COURT: Can you just ask him: Did you
16 mathematically calculate the value of the '820 patent
17 relative to the other --

18 MR. FINDLAY: Sure. I'll ask that question.
19 Is that fine? We're not going to argue that's violating
20 something?

21 THE COURT: And then no more, because we're
22 treading closely on the door here.

23 MR. CURRY: And -- and do you want me to advise my
24 witness to stop -- or to proceed in a different way or --

25 THE COURT: I don't think he's acting

1 inappropriately.

2 MR. CURRY: Okay.

3 THE COURT: I just -- I just would like us to stop
4 getting so close to MILs --

5 MR. CURRY: Yeah, I agree.

6 THE COURT: -- that trigger him. Okay.

7 MR. CURRY: Thank you.

8 (Bench conference concluded.)

9 MR. FINDLAY: May I proceed, Your Honor?

10 THE COURT: You may.

11 MR. FINDLAY: Thank you.

12 Q. (By Mr. Findlay) Mr. Green, let me rephrase the question
13 I had.

14 Did you do any sort of mathematical calculation to
15 determine the value of the '820 patent, relative to all of
16 the other patents within the CCE portfolio?

17 A. So you're asking about whether I did a fair market
18 valuation of the '820 patent versus other patents. This was
19 discussed at my deposition. And the answer is, I didn't do a
20 fair market valuation. There are indicators, however, that
21 the '820 patent is more valuable than others in the patent
22 portfolio, which I discussed in my deposition as well.

23 Q. Fair enough. Thank you.

24 Let's talk about lump sum versus running royalties.

25 Your opinion that you presented to the jury in this case

1 is that Apple should pay a running royalty, correct?

2 A. Correct.

3 Q. A lump sum refers to a payment which is one time in
4 nature, fully pulled up -- fully paid up. And once that is
5 paid, the alleged infringer gets a license to the patent,
6 goes on its way, and the parties can part company and never
7 have to worry about each other again. Fair?

8 A. That is one of the ways that a lump sum can be set up.
9 Some lump sums are for a period of time, so...

10 Q. Okay.

11 A. With that exception.

12 Q. And I don't know if you said this in your direct
13 testimony or not, but the Sharp agreement, was that
14 running -- running royalty or a lump-sum agreement?

15 A. That was a lump-sum agreement. All of the -- I think I
16 testified that all of the agreements, all seven licenses,
17 were lump sums or had been calculated to lump sums.

18 Q. So every license that CCE has entered for its portfolio,
19 including the '820, patent has been done on a lump-sum basis,
20 correct?

21 A. The agreements came down to lump sums. There's
22 indications, as I testified, that the lump sums were based on
23 counting up units or the -- and then calculating what a lump
24 sum would be based on those units.

25 Q. But that's -- and I'm not trying to fuss at you, but

1 that's a long way of saying we agree all of the other license
2 agreements to the CCE portfolio, which included the '820
3 patent, are lump-sum agreements. Fair?

4 A. They came down to lump sums. A lump sum can have a lot
5 of different meanings when you're looking at how license
6 agreements go together and what the parties are talking
7 about.

8 Q. So I think we agree. Do we agree? Lump sum?

9 A. With a caveat, yes.

10 Q. Fair enough. I'll take the caveat. Fair enough.

11 And you're aware, are you not, that CCE's policy is that
12 it is fine with a lump sum or a running royalty and really
13 doesn't have a preference. Fair?

14 A. I think that's fair with respect to its licensing
15 practices, yes.

16 Q. And you were here in the courtroom when Ms. Wagner
17 testified, were you not?

18 A. Yes, I was.

19 Q. And you heard her say something to that effect in
20 response to questions, that they were fine with a lump-sum
21 agreement, correct?

22 A. I don't recall her necessarily saying that, but I know
23 that to be true.

24 Q. Okay. Did you read Ms. Wagner's deposition in this case
25 that was taken?

1 A. Yes, sir.

2 Q. And do you remember in her deposition where she talked
3 about and admitted that lump-sum agreements have certain
4 advantages, like the fact that you're paid all up front, you
5 don't have to worry about the other party going out of
6 business or not paying you, and that a lump sum can save on
7 things like reporting obligations and expenses? Do you
8 remember that testimony?

9 A. I do remember that testimony.

10 Q. Now, I don't want you to tell me what the number is
11 until we close the courtroom, which we will be in a few
12 minutes, but you did provide a lump-sum opinion for Apple in
13 your expert report, correct?

14 A. Yes, I did.

15 Q. And that is -- and, again, we'll tell the jury what it
16 is when we seal the courtroom. But that lump sum is an
17 amount that would be a one-time payment which Apple would
18 then have to make no other payments, free to go about its
19 way, correct?

20 A. That's correct.

21 Q. And it's your opinion that that is a reasonable amount
22 that you set forth as an alternative opinion in your report,
23 correct?

24 A. That's true.

25 Q. Okay. Would you agree with me -- with this general

1 statement, that although you and I may disagree on the facts
2 of the case and how they play out or what side they support
3 or don't support, would you agree with me that it's important
4 for us to give the jury all the facts we can, so that they
5 can come to their decision?

6 A. Oh, absolutely. I would agree with that.

7 Q. Would you agree with me that neither you nor I would
8 want to hide relevant facts from the jury?

9 A. I think that's true, too, yes.

10 Q. And would you agree with me that you certainly would not
11 want the jury to think that you were hiding relevant facts
12 from them?

13 A. That's true, too.

14 Q. Okay.

15 MR. FINDLAY: Your Honor, at this time, I do think
16 we'll need to seal the courtroom.

17 THE COURT: All right. Let's seal the courtroom.
18 If you're not covered by the protective order, please exit.

19 (Courtroom sealed.)

20 (This portion of the transcript is sealed and filed
21 under separate cover as Sealed Portion No. 8.)

22 (Courtroom unsealed.)

23 MR. NELSON: And, Your Honor, we have three short
24 video clips before our last live witness.

25 And the first one is Ms. Supriya Gujral. And she

1 is the director of partner marketing at Apple.

2 (Video clip playing.)

3 QUESTION: Please state your name.

4 ANSWER: Supriya Gujral.

5 QUESTION: And, Ms. Gujral, who do you work for?

6 ANSWER: I work for Apple.

7 QUESTION: And what is your title at Apple?

8 ANSWER: My title is director of partner marketing.

9 QUESTION: Ms. Gujral, do you understand that
10 you've been sworn to testify truthfully and to the best of
11 your ability just as if you were in court in front of a jury
12 today?

13 ANSWER: Yes.

14 QUESTION: Is battery life important to Apple's
15 customers -- Apple's iPhone customers?

16 ANSWER: Yes.

17 QUESTION: Why do you say battery life is important
18 to Apple's iPhone customers?

19 ANSWER: Only because you would want to keep your
20 phone running all day long.

21 (Video clip ended.)

22 MR. NELSON: Your Honor, the next short video clip
23 will be Mr. Matthias Sauer, and he's the director of cellular
24 hardware and architecture at Apple.

25 (Video clip playing.)

1 QUESTION: Sir, please state your name.

2 ANSWER: My name is Matthias Sauer.

3 QUESTION: You're an inventor on two patents; is
4 that correct?

5 ANSWER: I'm, I think, currently on two and a
6 number of pending.

7 QUESTION: Do you think it's worse to infringe a
8 large company's patent or a small company's patent?

9 ANSWER: I don't think it depends on the size.

10 QUESTION: Does Apple respect intellectual
11 property?

12 ANSWER: Yes.

13 QUESTION: Has Apple changed the way it does things
14 or any of its technology in response to filing this lawsuit?

15 ANSWER: I'm -- I'm not aware of that. I don't
16 know. I do not know that.

17 QUESTION: What's your educational background?

18 ANSWER: I received training as electrical engineer
19 in Germany and finished that with a diploma degree, which is
20 somewhat equivalent to master's degree, and continued on with
21 a -- with a Ph.D. in electrical engineering.

22 QUESTION: And where did you attain your Ph.D. in
23 electrical engineering?

24 ANSWER: Technical University of Munich, Germany.

25 QUESTION: And when were you awarded the Ph.D.?

1 ANSWER: It was in 1994.

2 QUESTION: Did you start working in industry after
3 that?

4 ANSWER: No. I did a few more years of research,
5 academic research, as a post-doc first in Gothenburg, Sweden,
6 and afterwards at the University -- excuse me -- University
7 of Oxford.

8 QUESTION: And what was your post-doctoral research
9 in?

10 ANSWER: It was in formal methods for hardware
11 design.

12 QUESTION: You said formal methods --

13 ANSWER: Yes.

14 QUESTION: -- for hardware design?

15 ANSWER: Hardware design, yes.

16 QUESTION: What does that mean?

17 ANSWER: It means how to use high-level languages
18 and logic reasoning to design circuit architectures or
19 computer architectures in a specific, correct manner and have
20 proof techniques to show that the design you made is correct.

21 QUESTION: Have you ever heard of flow control
22 buffer status reporting?

23 ANSWER: Actually, I've heard of that.

24 QUESTION: What is flow control buffer status
25 reporting?

1 ANSWER: So that's -- yeah. So that rings a bell
2 now. So there's a way of controlling the thermal dissipation
3 of the -- of the modem that the Qualcomm chipset provides,
4 and it's used in our devices to avoid overheating.

5 And one way -- or one of the ways to accomplish
6 that is to throttle the throughput in the uplink or the
7 downlink. And that -- in that regard, you control the uplink
8 or downlink flow. And you could accomplish that through
9 using buffer status reports.

10 QUESTION: So how does -- how does flow control BSR
11 affect thermal dissipation?

12 ANSWER: So, if you control the uplink flow to send
13 fewer data, fewer payload data, then there's less computation
14 to be done in the uplink; and, therefore, there's also less
15 uplink activity on the power amplifier, which in turn leads
16 to a lower dissipated heat in the electric device, electronic
17 devices.

18 QUESTION: Well, why is it important to seek a
19 lower dissipated heat?

20 ANSWER: Well, from a user's perspective, if you
21 want to -- well, or -- well, just in general, you don't want
22 the device to exceed a certain temperature at the outside
23 skin of the device.

24 And that's one -- one reason. So you want to
25 control that. And the baseband is one contributor of many

1 that's taken into consideration.

2 Another reason is that the circuitry might exceed
3 their operating temperature range, and you want to control
4 that to avoid an uncontrolled shutdown of the device.

5 (End of video clip.)

6 MR. NELSON: And, lastly, Your Honor, there's
7 Mr. Vijay Ramamurthi. He's a software engineer at Apple who
8 works on LTE.

9 (Video clip playing.)

10 QUESTION: Good morning.

11 ANSWER: Good morning.

12 QUESTION: Will you please state your name for the
13 record?

14 ANSWER: My name is Vijay Kumar Ramamurthi.

15 QUESTION: Question, what documents did you review
16 in preparation for today?

17 ANSWER: I did -- apart from the context of the
18 litigation, I did go through the specification, MAC
19 specification.

20 QUESTION: What specification?

21 ANSWER: The MAC specification.

22 QUESTION: What's the MAC specification?

23 ANSWER: LTE 36.321.

24 QUESTION: Okay. We'll get to that later. But I
25 assume you're referring to the LTE standard specification?

1 ANSWER: That is correct.

2 QUESTION: It sounds like you looked at documents
3 other than the MAC specification. I want to know what those
4 documents are.

5 ANSWER: Okay. I looked at the patent application.

6 QUESTION: The patent application?

7 ANSWER: Yeah.

8 QUESTION: Based on what you read, what do you know
9 about the patent?

10 ANSWER: Again -- again, the -- the -- the patent
11 document is -- is a legal document, first of all. So I do
12 not really understand much of it. You know, it's a lot of
13 legal jargon in there.

14 And I was just going through -- you know, just
15 glancing through what the patent was so that -- that -- you
16 know, so I have some understanding of the patent.

17 QUESTION: So you didn't really read the patent in
18 detail; you just glanced at it?

19 ANSWER: That would be a correct statement, yes.

20 QUESTION: You just glanced at it.

21 ANSWER: Yeah.

22 QUESTION: For a minute? Two minutes?

23 ANSWER: Maybe five to ten minutes.

24 QUESTION: Five -- just -- okay. Just glanced at
25 it for five to ten minutes?

1 ANSWER: Yes.

2 QUESTION: Did you look at any other documents in
3 preparation for today?

4 ANSWER: Yes. I did mention that I did look at the
5 LTE specification document.

6 QUESTION: You work for Apple.

7 ANSWER: Yes.

8 QUESTION: How long have you worked for Apple?

9 ANSWER: I started working there in August 2014.

10 QUESTION: 2014?

11 ANSWER: Yes.

12 QUESTION: What's your current job title?

13 ANSWER: Senior software engineer.

14 QUESTION: Do you have any people that report to
15 you?

16 ANSWER: No.

17 QUESTION: When you started in 2014, what was your
18 job title?

19 ANSWER: It was the same job title.

20 QUESTION: What would you say are your main
21 responsibilities at Apple?

22 ANSWER: My job is to -- I work on the LTE system,
23 and I troubleshoot and, you know, fix bugs, if any, in the
24 LTE system.

25 QUESTION: Do you know anything about CCE, or

1 Cellular Communications Equipment, also the Plaintiff in this
2 case?

3 ANSWER: No, I do not.

4 QUESTION: I'm just asking you, like, what day or
5 year or whatever did you first learn about this patent?

6 ANSWER: The first time was regarding this
7 litigation sometime, and I don't remember the exact date.

8 QUESTION: So ballpark, within the last week?

9 ANSWER: Maybe -- maybe a few weeks.

10 QUESTION: Do you wish you would have known about
11 the '820 patent earlier than just a few weeks ago?

12 ANSWER: No.

13 (End of video clip.)

14 MR. HILL: Your Honor, before we call our next
15 witness, there's one matter we'll need to take up with the
16 Court.

17 THE COURT: All right.

18 (Bench conference.)

19 MR. HILL: Your Honor, I wanted to approach
20 regarding a potential limine issue that's going to come up
21 with Ms. Mewes, who will be our next witness. She's an Apple
22 in-house lawyer.

23 The issue, Your Honor, is Apple has made a
24 concerted effort to put Ericsson as a central figure in this
25 case by pursuing a defense that depends largely on

1 discrediting the inventor and suggesting to the jury that an
2 Ericsson witness would come in this courtroom and explain
3 that Mr. Sebire was not the sole inventor on the '820 or that
4 others made contributions -- their derivation defense, if you
5 will.

6 By doing so, Your Honor, they have put plainly at
7 issue the relationship between Apple and Ericsson because it
8 goes to the credibility of the Ericsson witness and the bias
9 that that witness may have because of the relationship
10 between Apple and Ericsson.

11 So as part of my questioning of Ms. Mewes, who has
12 testified in her deposition and has personal knowledge of
13 that relationship, I would like to ask about the
14 relationship, about the fact that there is a license
15 agreement between the two, that it was entered in December of
16 2015, and the terms of that license agreement generally.

17 I don't plan to try to admit the document. I don't
18 plan to put the document in front of the jury. I plan to
19 simply expose the extent of Apple's relationship with
20 Ericsson because it is directly relevant to the bias and to
21 the credibility of both Apple's story and of the testimony
22 we're going to hear from an Ericsson witness soon, Magnus
23 Stattin.

24 Ms. Mewes will be the only Apple representative who
25 will have personal knowledge of the license agreement through

1 whom I can make these points. And so I would ask leave of
2 the Court to do that and make sure I'm clear of any limine
3 issues before I do so.

4 THE COURT: Response.

5 MR. LUMISH: Do you need to do it in the next
6 15 minutes, or could we take this up in the morning after I
7 have a chance to look at the deposition testimony? Because
8 this is catching me a little bit by surprise.

9 MR. HILL: Your Honor, I would prefer to put my
10 witness on and keep our trial moving.

11 MR. LUMISH: No, no. I mean, do you need to ask
12 those questions, though, in the first 15 minutes?

13 MR. HILL: It's the first part of my -- of my
14 issues, Your Honor. I may not get fully through them today.

15 THE COURT: Then -- then we'll let the jury go for
16 the day. I've got a few issues I need to take up with y'all
17 anyway. And we'll start with her first thing in the morning,
18 and we'll take up this issue.

19 MR. LUMISH: Thank you, Your Honor.

20 THE COURT: All right.

21 MR. LUMISH: Appreciate that very much.

22 MR. HILL: Thank you.

23 (Bench conference concluded.)

24 THE COURT: Ladies and Gentlemen of the Jury, you
25 have put in a long, hard day. I've been watching you pay

1 attention. I appreciate it. And the parties do, too. Your
2 reward, we're going to stop 15 minutes early today. You've
3 earned it.

4 So I'll see you in the morning at 9:00 a.m. Do not
5 discuss the case with anyone. Talk about whatever else is
6 going on in your day but not this case, all right? We'll see
7 you tomorrow.

8 COURT SECURITY OFFICER: All rise.

9 (Jury out.)

10 THE COURT: Please be seated.

11 All right. We'll take up the next witness in the
12 morning. I'll encourage y'all to continue to meet and confer
13 on that issue.

14 MR. HILL: Your Honor, I'm -- I'm happy to meet and
15 confer and deal with it in the morning. The reason I raise
16 it today, too -- or would like to raise it today, is just to
17 have some certainty so when I come in in the morning I know
18 which direction I have to go, so to speak.

19 So to the extent the Court can give me guidance
20 about whether that topic will be allowed to be explored, I
21 would appreciate it. But if you can't, and I need to do it
22 in the morning, I certainly respect that, too.

23 THE COURT: I would like to hear a response before
24 I make a ruling. So I'm going to -- I'm going to give
25 Mr. Lumish the time he needs to look back over the testimony

1 and give me an adequate response.

2 MR. HILL: And we'll certainly -- I'm certainly
3 willing to discuss it with him as well so that they
4 understand the extent of what I'm planning so that if we can
5 do it by agreement we can do it.

6 THE COURT: Very good.

7 MR. LUMISH: That's all I ask for. Thank you, Your
8 Honor.

9 THE COURT: Okay. All right. Before I let you all
10 go -- we're early so I didn't develop your trial times.
11 I'll -- sorry, you're going to have to wait until in the
12 morning for those.

13 But the Court has received your joint proposed jury
14 instructions. Thank you for submitting those in in joint
15 form. In the e-mail it said we're going to continue and meet
16 and confer and see if we can narrow down some of these
17 disputes.

18 As you know, the Court takes the charge very
19 seriously, and it is a heavy work burden -- workload for the
20 Court to get it done and in final form.

21 What I don't want to do is spend our late night
22 tonight and through the weekend getting this thing whittled
23 down to find out on Monday you-all have worked out a bunch of
24 these disputes.

25 Have you had a meaningful meet-and-confer about the

1 charge? Would more time be beneficial? Can you look at it
2 tonight and give me an updated version in the morning? I'm
3 just trying to --

4 MR. HILL: Yes, Your Honor, we can look at it
5 tonight. And we will give you an updated version in the
6 morning.

7 MR. LUMISH: Agreed. Absolutely.

8 THE COURT: Okay. All right. Then just to give
9 you an idea of tomorrow, we will go until noon and we will
10 recess until Monday morning, okay?

11 Is there anything further the Court can help you
12 with?

13 MR. LUMISH: Not from Defendants, Your Honor.

14 THE COURT: All right. We'll be in recess until
15 tomorrow morning.

16 COURT SECURITY OFFICER: All rise.

17 (Court adjourned.)
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